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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,528

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Barry W. Jackson

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10/26/2006

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EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/660,528

Applicant(s)

JACKSON ET AL.

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19, 21, 23-26, 28 and 30-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-19, 33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21, 23-26, 28 and 32 is/are rejected.
- 7) ☒ Claim(s) 30, 31, 35 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 07, 2006 has been entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 lines 13-14, to which horizontal cord does "the horizontal cord" refer?  
Lines 18, to which horizontal cord does "the horizontal cord" refer?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Arndt**

**'743.** Arndt '743 discloses, Fig. 17, a truss comprising one or more truss members 4/6/6' forming a generally horizontal cord having a middle and a pair of opposed ends; one or more truss members 2/2'/3 forming a generally horizontal cord generally parallel to and above the first cord; a pair of diagonal members c having first and second ends and an adjustable member 38 oriented generally vertically and having an upper end and a lower end with the upper end of the adjustable member connected to the middle of the horizontal cord 2/2'/3 of the truss, and the lower end of the adjustable member is connected to a first end of each of the diagonal members, (as at 41, 41'), and the second ends of the diagonal members are connected one to each of the ends of the horizontal cord, (as at 39).

**Claims 23, 28, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke '687.** Burke '687 discloses, Figs. 1, 2, and 4-6, a truss comprising a truss comprising a first truss section 1 having first section upper and lower generally horizontal cords 3, 4 separated by first section struts 11, a second truss section 2 having second section upper and lower generally horizontal cords 23, 24

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separated by second section struts 11', the cords each having a web 13 or 25 and flanges 9, 14 or 29, 32, (as seen in Figs. 1 and 2); the first and second section upper cords forming an upper pair of cords; the first and second section lower cords forming a lower pair of cords; the cords are slidable relative to one another along the longitudinal axes of the cords; and, the webs 13 and 32 of each pair of cords are spaced apart by the flanges 9, 14 and 29, 32 of a cord.

wherein the second section upper and lower cords can be attached to first ends of the first section upper and lower cords in a plurality of locations 34,35 such that the truss may be assembled in a plurality of widths, col. 4, lines 9-12.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burke '687.** To have provided the Burke '687 truss assembly with any number of connected truss sections, including a third truss section, thus allowing formation of any particularly sized truss as maybe necessary, would have been obvious to one having ordinary skill in the art at the time the invention was made particularly since it has been well established that mere duplication of parts has no patentable significance unless a new and unexpected result is produced, *In re Harza*, 274 F.2d 669, 124 USPQ 378

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(CCPA 1960). Further, To have formed the Burke '687 truss assembly with the ends of the upper and lower cords having respective telescopic sliding connection one with another, (e.g., form one end of a cord smaller so as to slidably fit within a mating end of a longitudinally aligned cord), would have been obvious to one having ordinary skill in the art at the time the invention was made particularly since it has been well established that the use of a one piece construction instead of multi-piece assembly would be merely a matter of obvious engineering choice, In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

**Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke '687 in view of Botel et al.**

Burke '687 does not appear to specifically disclose an adjustable member connected to a pair of diagonal members serving to vary the camber of an accompanying tension rod.

However, Botel et al. discloses, Fig. 1, A truss comprising one or more truss members 1 forming a generally horizontal cord having a middle and a pair of opposed ends; a pair of diagonal members 9 having first and second ends and an adjustable member 10-14 oriented generally vertically and having an upper end and a lower end with the upper end of the adjustable member connected to the middle of the horizontal cord of the truss, (as along 13/14), the lower end of the adjustable member is connected to a first end of each of the diagonal members, (as along 10), and the second ends of

the diagonal members are connected one to each of the ends of the horizontal cord, (as along 8).

To have provided the Burke '687 truss assembly with an adjustable member serving to vary the camber of an accompanying tension rod, as by having the upper end of the adjustable member connected to the middle of the lower cord of the truss with the lower end of the adjustable member connected to the first end of each of the diagonal members, and the second ends of the diagonal members connected one to each of the distal ends of the truss sections, thus allowing a variance of tension within the resulting truss structure assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Botel et al.

Claims 30, 31, 35, and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 21 and 23 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
September 16, 2006